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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA) 21CR6140

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vs.

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Buffalo, New York

RAEKWON GREEN,) August 17, 2021

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Defendant. 11:00 a.m.

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CONTINUATION OF DETENTION HEARING**Transcribed from an Electronic Recording Device**

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TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MARIAN W. PAYSON

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UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

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THE CLERK: United States of America versus
Raekwon Green, 21CR6140.

MAGISTRATE JUDGE PAYSON: Okay. Mr.
Schiano, I haven't seen you on the case yet, but I
understand that you have been retained by Mr. Green.

MR. SCHIANO: That's correct, your Honor.
Thank you.

MAGISTRATE JUDGE PAYSON: Okay. So just
procedurally, where we are? I understand a superseding
indictment was returned in a case before Judge Pedersen,
Mr. Green was included in that indictment. I understand
Judge Pedersen conducted an arraignment and you'll be
seeing him at 11.

MR. SCHIANO: That's correct, Judge.

MAGISTRATE JUDGE PAYSON: Okay. So, I
assume this is my last act with respect to this case and
what I wanted to ask Mr. Schiano, I'm prepared to render
my decision on the government's motion for detention,
unless there is any reason why you, as Mr. Green's
counsel, are asking me not to do that?

MR. SCHIANO: No, Judge, you're fine.

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13:14:10 2 MAGISTRATE JUDGE PAYSON: All right. Let me
13:14:13 3 note, for the record, that at the conclusion of the
13:14:19 4 detention hearing that was held at the end of July, I
13:14:25 5 had inquired about parole violations that have been
13:14:32 6 lodged against Mr. Green in earlier cases and they were
13:14:36 7 noted in the Pretrial Services Report and I was
13:14:39 8 interested in obtaining some more information about
13:14:41 9 that. I asked the government to see if they could find
13:14:45 10 information. And, I'm assuming, Mr. Schiano, that you
13:14:49 11 saw the e-mail that Mr. Harvey sent this morning with
13:14:52 12 respect to those parole violations?

13:14:56 13 MR. SCHIANO: I did, Judge, yes.

13:14:57 14 MAGISTRATE JUDGE PAYSON: Anything you want
13:14:57 15 to say on that?

13:14:58 16 MR. SCHIANO: No, Judge.

13:15:10 17 MAGISTRATE JUDGE PAYSON: Okay. So the
13:15:10 18 government has made a motion to detain Mr. Green both on
13:15:15 19 the grounds of dangerousness as well as risk of flight.
13:15:20 20 At the time of the detention hearing, Mr. Green was
13:15:24 21 charged in a Complaint, not in an indictment, that was
13:15:27 22 returned later. The Complaint was sworn out before me.
13:15:32 23 I say that because at the time that I swore out the
13:15:36 24 Complaint, I had to make a probable cause determination
13:16:58 25 at the time the Complaint was sworn out and Mr. Green

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13:17:01 2 was charged with attempted Hobbs Act robbery as well as
13:17:05 3 brandishing a firearm during and in relation to a crime
13:17:08 4 of violence that related to a violent home invasion
13:17:13 5 robbery at 331 Conrad Drive on March 22, 2020. The
13:17:21 6 government indicated that the penalties that Mr. Green
13:17:23 7 faces are, if he were to be convicted, there are
13:17:26 8 certainly very serious penalties, a maximum jail
13:17:30 9 sentence of 20 years on the Hobbs Act robbery. If he
13:17:34 10 were to be convicted of the brandishing of the firearm
13:17:38 11 charge, seven years up to life consecutive to any term
13:17:44 12 of imprisonment on the Hobbs Act robbery. I conducted a
13:17:51 13 detention hearing, as I said, at the end of July having
13:17:54 14 received a pretrial services report which recommends Mr.
13:18:00 15 Green's detention. At the detention hearing, the
13:18:04 16 government and the defense proceeded by way of proffer
13:18:08 17 and I considered the report. I've considered the
13:18:10 18 proffers and the available information regarding the
13:18:15 19 3142 (g) factors that I'm required to consider. I am
13:18:18 20 aware that the government's motion that is based on
13:18:22 21 dangerousness requires that the government prove that
13:18:26 22 proposition by clear and convincing evidence, that is,
13:18:29 23 that there are no condition or combination of conditions
13:18:32 24 which would reasonably assure the safety of the
13:18:34 25 community were Mr. Green to be released. As to the

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13:18:39 2 motion based on risk of flight, the government's burden
13:18:43 3 is a lesser burden, that is, by a preponderance of
13:18:46 4 evidence that there exists no condition or combination
13:18:49 5 of conditions which would reasonably assure the
13:18:51 6 defendant's appearance at court or for sentencing if he
13:18:56 7 were to be convicted.

13:18:59 8 The case, as the government noted, gives
13:19:01 9 rise to a rebuttable presumption that the defendant
13:19:05 10 should be detained. Congress has determined that a
13:19:08 11 presumption in favor of detention arises in certain
13:19:12 12 cases, and this is a case to which the rebuttable
13:19:14 13 presumption arises. Let me make a couple of
13:19:18 14 observations about the rebuttable observations. The
13:19:22 15 government is entitled to revoke it. The defense
13:19:53 16 proffered information which I have considered in an
13:19:56 17 effort to rebut that. At the time of the detention
13:19:59 18 hearing, as I indicated, Mr. Green was charged in a
13:20:02 19 Complaint, not in an indictment. That is significant
13:20:06 20 insofar as an indictment standing alone constitutes a
13:20:11 21 finding of probable cause sufficient for the government
13:20:13 22 to be entitled to rely on a presumption. In the absence
13:20:17 23 of an indictment, the Court would have to make a
13:20:20 24 probable cause finding. As I said, I made that on the
13:20:23 25 basis of the Complaint when it was presented to me, but

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13:20:26 2 my view has always been, at the time of a detention
13:20:30 3 hearing, I would have to, essentially, make another
13:20:33 4 probable cause determination if there had not been an
13:20:37 5 indictment. The fact that two weeks have elapsed since
13:20:40 6 the detention hearing and my decision, I don't think
13:20:43 7 should -- Mr. Green shouldn't suffer the consequences of
13:20:49 8 that, so I do want to indicate for the record that I am
13:20:53 9 determining that there is probable cause to support the
13:20:56 10 charges that were made against Mr. Green in the
13:21:01 11 Complaint prior to the indictment. So I'm not relying
13:21:03 12 on the indictment for a probable cause determination,
13:21:08 13 but I am separately making that determination.

13:21:13 14 I think that this is a reasonably strong
13:21:16 15 case that the government has made. I've considered the
13:21:38 16 (g) factors. Mr. Green is obviously a relatively young
13:21:43 17 man with pretty significant and long criminal history
13:21:47 18 marked by fairly repeated violations of supervision, be
13:21:53 19 they violations of probation or parole. And you can
13:21:58 20 look at the criminal history and he has got a number of
13:22:01 21 prior convictions that resulted in violations of
13:22:05 22 probation and parole. I was more interested in the
13:22:07 23 parole violations because they were more recent. The
13:22:11 24 probation violations occurred some years ago when Mr.
13:22:16 25 Green was younger, in his, I think, the probation

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13:22:21 2 violations began at about age 19, if I'm not mistaken.
13:22:27 3 He has a wife, a daughter, mother, siblings here in the
13:22:31 4 area, so he has family support. He has got ties to the
13:22:35 5 community. He and his wife have indicated that he has
13:22:41 6 been working through a temporary agency, although his
13:22:44 7 mother said she didn't have any information about that.
13:22:47 8 But for purposes of the hearing, I will credit that he
13:22:50 9 has engaged in some temporary employment for the last
13:22:54 10 several years and credit that he does not have a GED or
13:22:58 11 a diploma. So, he is employable and has evidently
13:23:03 12 worked, has family connections, and, to my knowledge,
13:23:07 13 other than periods of time that he has been in jail and
13:23:10 14 they have not been insignificant, he appears to be a
13:23:15 15 life-long resident of this area. That notwithstanding,
13:23:38 16 I grant the government's motion for detention relying on
13:23:42 17 the rebuttable presumption. I find that there is
13:23:46 18 probable cause to support the charges. There was much
13:23:50 19 back and forth during the proffers about the reliability
13:23:55 20 of the identifications made by the witnesses and the
13:23:59 21 strength of the government's case. I listened again to
13:24:04 22 those proffers following the actual hearing. I agreed
13:24:10 23 with Mr. Lembke that the pace of Mr. Harvey's
13:24:15 24 presentation was fairly quick and there were a lot of
13:24:18 25 people that were being bantered back and forth, so I

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13:24:21 2 wanted to make sure I understood correctly what Mr.
13:24:25 3 Harvey said. The take away, in my perspective, from the
13:24:31 4 proffers made is that Mr. Green has been charged with
13:24:37 5 serious offenses for which he faces serious penalties.
13:24:42 6 Congress has determined that a rebuttable presumption in
13:24:46 7 favor of detention arises under these circumstances, and
13:24:51 8 that the circumstances being that the defendant has been
13:24:55 9 charged with participation in a violent home invasion
13:25:00 10 robbery. I say "violent," because the victims evidently
13:25:05 11 indicated that three perpetrators invaded their home.
13:25:11 12 They were dressed in masks, so identification was not
13:25:18 13 easily made and has not been made, to my knowledge, by
13:25:21 14 the residents of the home. There were two adult
13:25:26 15 residents and two teenage children at the time. The
13:25:30 16 perpetrators were armed with handguns, held the
13:25:33 17 occupants at gun point, tied one of resident's hands,
13:25:41 18 walked him around the residence to attempt to get him to
13:25:47 19 identify where the government says drugs and money were
13:25:51 20 located. And based on the government's proffer, I think
13:25:54 21 that is a reasonable inference that that is what the
13:25:57 22 perpetrators were looking for. There were two
13:26:03 23 statements that were made, which seems to me to be
13:26:09 24 reasonably construed as threats to shoot or kill one of
13:26:14 25 the residents in the event that the perpetrators did not

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13:26:17 2 find what they were looking for. Ultimately, they stole
13:26:21 3 cash and personal property and one of the residents was
13:26:27 4 pistol whipped by one of the perpetrators. Somebody
13:26:31 5 identified as Witness 1, and I think it's pretty clear
13:26:34 6 when you read the Complaint as well as consider the
13:26:38 7 proffer and the indictment, that we know who that is,
13:26:42 8 but I'm not going to state that on the record, but
13:26:45 9 evidently that individual, and this is borne out by the
13:26:50 10 indictment, is not currently cooperating with the
13:26:57 11 government. But the government, in response to a
13:26:59 12 question that I asked in the detention hearing,
13:27:01 13 identified that Witness 1 -- identified Witness 1 as the
13:27:06 14 perpetrator who pistol whipped one of the residents. I
13:27:12 15 am not considering that allegation in making my
13:27:17 16 determination. It was not part of the government's
13:27:19 17 original proffer, I think, because Witness 1 is no
13:27:22 18 longer cooperating, and that was the source for that
13:27:25 19 information, at least that is what I understand. And it
13:27:29 20 was only in response to a question that I made that I
13:27:31 21 elicited that information. And I just want, again, the
13:27:35 22 record to be clear, I'm not relying on that allegation
13:27:38 23 in reaching the determination. The government did
13:28:05 24 proffer that they have two cooperating witnesses
13:28:09 25 identified as Cooperating Witness 1 and Cooperating

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13:28:13 2 Witness 2 who have provided significant information
13:28:15 3 about the robberies. They've identified themselves as
13:28:19 4 two of the three perpetrators who entered the residence
13:28:23 5 and they have both identified the defendant as the third
13:28:29 6 perpetrator or, if you consider Witness 1 as the fourth,
13:28:34 7 and, I think, Witness 1 being the individual outside of
13:28:37 8 the residence, they identified the defendant as the
13:28:43 9 third perpetrator or the third person who went inside
13:28:46 10 the house. CW 1 identified the defendant from a photo
13:28:53 11 array as somebody that he knew as "Bundy" or "Bundles."
13:28:58 12 He also identified CW 2 as one of the perpetrators. CW
13:29:05 13 2 admitted his involvement in the robbery, identified --
13:29:10 14 eventually identified the defendant as a perpetrator
13:29:14 15 over a video identification. As I understand it, he
13:29:17 16 said that individual looked like the perpetrator, but he
13:29:20 17 could not be 100 percent sure. There was a later array
13:29:24 18 that was -- or a later display of the same array shown
13:29:28 19 to him and he identified the defendant as one of the
13:29:32 20 perpetrators who had a gun in the 331 Conrad Drive
13:29:38 21 robbery. Witness 1 provided information, which is
13:30:06 22 consistent with what CW 1 and CW 2 said, although, I
13:30:10 23 understand that he is no longer cooperating and so the
13:30:13 24 government does not expect to call him as a witness at
13:30:20 25 trial. Although the victims did not identify the

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13:30:24 2 defendant or any of the perpetrators, presumably because
13:30:29 3 they were masked, the information provided by the
13:30:33 4 victims about what happened in a robbery as stated in
13:30:37 5 the Complaint and as proffered by the government at the
13:30:41 6 proffer seems, to me, to be largely consistent with
13:30:45 7 information provided, at least by Victim 1, as set forth
13:30:52 8 in the Complaint. I compared those two accounts.

13:30:57 9 So, the serious crimes, the government has
13:31:05 10 reasonably strong evidence against the defendant. Two
13:31:10 11 of the -- two perpetrators who identified themselves as
13:31:15 12 having been involved in the home invasion robbery
13:31:18 13 independently identified this defendant as the third
13:31:24 14 perpetrator.

13:31:27 15 With respect to the defendant's ability to
13:31:32 16 abide by conditions as well as to refrain from criminal
13:31:38 17 conduct if I were to set release conditions, I think his
13:31:42 18 criminal history weighs fairly significantly against a
13:31:45 19 finding that there could be conditions which would
13:31:52 20 reasonably assure safety of the community. I'm denying
13:32:23 21 the motion by the government on the grounds of risk of
13:32:26 22 flight. I realize these are very serious offenses with
13:32:30 23 more time than I think Mr. Green has faced previously.
13:32:33 24 And Mr. Green has spent, you know, some time in jail, so
13:32:36 25 there have been some charges. And I think Mr. Green has

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13:32:40 2 been in jail when those charges were pending. But I
13:32:44 3 don't see from the criminal history that there is a
13:32:47 4 strong basis for saying that Mr. Green would flee and
13:32:50 5 not show up to court. But with respect to refraining
13:32:55 6 from criminal conduct and abiding by release conditions,
13:32:59 7 I think the criminal history weighs significantly
13:33:03 8 against him as to those considerations. His criminal
13:33:09 9 history includes four prior felony convictions, two
13:33:13 10 attempted burglaries in the second degree. The first as
13:33:18 11 a quite young man, age 16. The next one, the next year,
13:33:24 12 but significantly the felony, first felony conviction,
13:33:30 13 was followed by three violations of probation ultimately
13:33:34 14 resulting in a resentence of one to three years of
13:33:38 15 imprisonment. Paroled eventually. A parole violation
13:33:44 16 in 2015 for the reasons that the government explained in
13:33:47 17 the e-mail. According to the government, the defendant
13:33:49 18 was violated for selling marijuana, failing to attend
13:33:53 19 treatment and failing to get a job. He was ultimately
13:33:56 20 sentenced to 18 months to three years imprisonment on
13:33:59 21 that parole violation. The felony, the second felony,
13:34:05 22 attempted burglary in 2013, was committed while on
13:34:08 23 probation. There was the subsequent felony possession
13:34:12 24 of stolen property for which the defendant was sentenced
13:34:14 25 to 18 months to three years. Parole was again revoked

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on that, apparently, my inference, is based on the same conduct as led to the parole violation on the first attempted burglary conviction. Subsequent to that, the defendant was convicted of felony criminal possession of controlled substance with intent to sell for which he received a 30-month imprisonment, one-year post-release supervision. He was paroled in 2017. That parole was -- he faced a violation of parole and that parole was revoked there as well based on possession of marijuana, curfew violations and visiting gang members in jail. And then, unfortunately, the criminal conduct continued, and he has three misdemeanor convictions; two controlled substance convictions, no, three controlled substance convictions. One was introducing contraband into the prison, two occurred in 2019, and the final misdemeanor in 2020. So that is a fairly consistent, unfortunately, an unabated record of criminal conduct.

So, based on the charges, the rebuttable presumption, the evidence as well as the criminal history and history of parole and probation violations, I grant the government's motion for detention and I find that the motion is supported by clear and convincing evidence, that there are no conditions or combination of conditions the Court could set which could reasonably

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13:36:01 2 assure the safety of the community or the defendant to
13:36:03 3 be released. Defense certainly has the right to seek
13:36:06 4 review of my determination.

13:36:08 5 MR. SCHIANO: Thank you, Judge.

13:36:08 6 MAGISTRATE JUDGE PAYSON: I think that's it,
13:36:11 7 unless anybody has anything else.

13:36:13 8 MR. HARVEY: No. Thank you, Judge. Thank
13:36:15 9 you.

13:36:15 10 MAGISTRATE JUDGE PAYSON: All right. Thank
13:36:16 11 you.

12 * * *

13 CERTIFICATE OF REPORTER

14

15 I certify that the foregoing is a correct transcript
16 of the record to the best of my ability of proceedings
17 transcribed from the audio in the above-entitled matter.

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19 S/ Karen J. Clark, RPR

20 Official Court Reporter

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